

Indigent Defense Act

A. 108, R. 154, S. 446

Vetoed by Governor: June 18, 2007

Veto Overridden: June 21, 2007

Effective Date: June 21, 2007

The Indigent Defense Act establishes a unified statewide public defender system. The circuit public defenders shall be nominated by State Circuit Public Defender Panels (Panels) and appointed by the Commission on Indigent Defense (Commission). A circuit public defender shall serve a term of four years, may be reappointed, shall be a full-time employee of the State prohibited from the private practice of law or another full-time profession, and shall be compensated and have the same benefits as the circuit solicitor. The circuit public defender may be removed for cause.

The Panels shall be composed of and elected by the attorneys who reside within each circuit. Each county within the circuit must be represented by at least one member on the Panel and the remaining members shall be chosen according to a formula. Panel members serve for a term of five years.

The Commission shall consist of thirteen members. Nine members shall be appointed by the Governor as follows: (1) one member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years. A person may not be appointed to the Commission pursuant to this item unless the person is a public defender; (2) a member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years; (3) two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of 2 years; and (4) two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms. The remaining four members must be appointed as follows: (1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years; and (2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected. Commission members may only be removed for cause. The chairman must be elected by the Commission from its membership and shall serve for a term of two years. A quorum would be a majority of the currently serving members, and a decision would be made by majority vote of those members present; however, a majority of the entire Commission shall approve the appointment or removal of a circuit public defender or executive director. Commission members shall receive no compensation except reimbursement for actual expenses incurred.

The Commission: (1) may establish divisions within the Office of Indigent Defense to administer services and programs; (2) shall develop rules, policies, procedures, regulations, and

standards to comply with State law or regulations and the rules of the Supreme Court; (3) shall cooperate and consult with State agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services; (4) shall assist the public defenders; (5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation; (6) shall have the authority to negotiate and enter into contracts with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender's office and in other cases in which indigent representation by independent counsel is necessary or advisable; and (7) shall establish and administer the rules and procedures for selection of members to serve on the Panels and shall establish the rules and procedures under which the Panels shall operate.

Each circuit public defender may employ one or more chief county public defenders in the counties within the circuit. The circuit public defender may maintain offices and employ assistant public defenders and other staff who will serve at the pleasure of the circuit public defender. These employees receive the same benefits as employees of the administering county. These employee costs must be paid by the administering county and the county must be reimbursed from the operational funds of the circuit public defender and from county and State appropriated funds. No county may appropriate funds for the public defender's operations in a fiscal year below the amount in the immediate previous fiscal year. No current employee may be terminated, except for cause, for a period of one year from the effective date of employment. No salaries, benefits, or leave accrued may be decreased as of the effective date of employment with the public defender's office. The governing body of the county, in conjunction with the other counties in the circuit, in a pro rata share according to population, shall appropriate offices and other materials and equipment for the public defender. All contracts in force on the effective date of this act between private attorneys and indigent defense corporations for the provision of indigent defense services within a county or counties shall remain in effect and be recognized by the Commission and circuit public defenders until they expire, or one year from the date of this act, whichever is earlier.

Attorneys shall be appointed to represent indigents according to the provisions of this act instead of being appointed by the bar of the respective counties. Vouchers for reimbursement by appointed attorneys must be submitted to the Office of Indigent Defense instead of the county clerk of court. The Office of Indigent Defense would be responsible for submitting the voucher to the trial judge for approval and submission for payment. A person to whom counsel has been provided shall execute an affidavit that he or she is financially unable to employ counsel and must set forth all of his or her assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets to the general fund of the State.

The executive director of the Office of Indigent Defense shall still be appointed by the Commission and retain all statutory duties that existed prior to this act. In addition, the act provides the following duties: coordinate all operations and supervise compliance of all circuit public defenders' offices with the rules and policies of the Commission; prepare and submit to the Commission an annual budget and report all data for the provision of statewide indigent defense; coordinate in development and implementation of all rules and policies adopted by the

Commission; maintain records of financial transactions for Commission operations; apply for and accept all funds available to the Commission from any source; provide training to attorneys and staff; attend all Commission meetings; and ensure the Commission does not exceed its budget.

The Office of Indigent Defense (Office) shall continue to serve as the entity that distributes all funds appropriated for the defense of indigents by the General Assembly. The Office shall continue to compile statistical data on indigent defense for the statewide system and report annually to the General Assembly. In June of each year, the Office will take any leftover funds existing for the payment of attorneys for indigent defendants in non-capital cases and roll that funding over to compensate attorneys for indigent defendants in capital cases. This roll over only will occur if funds for defense of indigents in capital cases have been completely exhausted. The act also increases the amount of funding for indigents in capital cases from a maximum of \$2.75 million to \$3 million. Only attorneys licensed in and residents of this State may be appointed by the court or compensated by the Death Penalty Trial Fund within the Office.

The act also amends various retirement and employment benefit statutes to include public defenders.